IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

FEB 2 6 2016

JULIA CLOUDLEY, CLERK

DORIS E. TUCKER,	BY: Skello 1 N DEPUTY CLERK
Plaintiff,) Civil Action No. 7:14cv673
v. BENEFICIAL FINANCIAL I, INC., ET. AL., Defendants.)) By: Michael F. Urbanski) United States District Judge))
	ORDER

This case was referred to the Honorable Robert S. Ballou, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) for proposed findings of fact and a recommended disposition.

On November 10, 2015, the Magistrate Judge issued a report and recommendation (ECF No. 30), recommending that the court: (1) Grant plaintiff's first motion to amend her complaint (ECF No. 28) except as to John Does 1-20; (2) Direct the Clerk to docket the first amended complaint and its exhibits separately on the docket; (3) Direct the plaintiff to promptly effect service upon Beneficial Financial I, Inc. and Surety Trustees, LLC in accordance with Federal Rules of Civil Procedure; (4) Deny as moot the motions to dismiss these actions (ECF. Nos. 20 & 26); and (5) Dismiss without prejudice defendants City of Roanoke, Moss & Rocovich, P.C., R. David Barbe, Dennis A. Barbour, and S.J. Robert Slemp.

No objections to the report were filed. However, on November 24, 2015, plaintiff filed a second motion to amend her complaint with an attached proposed second amended complaint. ECF No. 31.

Plaintiff's proposed second amended complaint (ECF No. 31 Attachment 1) names only Beneficial Financial I, Inc. and Surety Trustees, LLC as defendants. Because the court believes that it is in the interest of justice to allow plaintiff to file her second amended complaint, the court

GRANTS plaintiff's second motion to amend the complaint pursuant to Fed. R. Civ. Pro 15(a)(2).

The clerk is DIRECTED to docket the second amended complaint and its exhibits separately on the docket.

By granting plaintiff's motion to file her second amended complaint, plaintiff's pending motion to file her first amended complaint is moot. Therefore, the court will not adopt those portions of the report and recommendation related to plaintiff's first motion to amend her complaint. Like the first amended complaint, the second amended complaint moots the motions to dismiss (ECF Nos. 20 & 26) before the court as the second amended complaint only lists Beneficial Financial I, Inc. and Surety Trustees, LLC as defendants. Thus the portions of the report and recommendation that recommend denying as moot the motions to dismiss these actions (ECF Nos. 20 & 26) and dismissing without prejudice defendants City of Roanoke, Moss & Rocovich, P.C., R. David Barbe, Dennis A. Barbour and S.J. Robert Slemp will be adopted. Further, the court will adopt the portion of the report and recommendation directing plaintiff to promptly effect service upon Beneficial Financial I, Inc. and Surety Trustees, LLC, in accordance with the Federal Rules of Civil Procedure.

Therefore, the court will **ADOPT** in part the report and recommendation issued by the Magistrate Judge.

It is accordingly **ORDERED** and **ADJUDGED** that:

- 1. Plaintiffs second motion to amend (ECF. No. 31) is **GRANTED**.
- 2. Plaintiff's first motion to amend (ECF. No. 28) is **DENIED** as moot.
- Plaintiff is **DIRECTED** to promptly effect service upon Beneficial Financial I,
 Inc. and Surety Trustees, LLC, in accordance with the Federal Rules of Civil
 Procedure.

- 4. The motions to dismiss these actions (ECF Nos. 20 & 26) are **DENIED** as moot.
- Defendants City of Roanoke, Moss & Rocovich, P.C., R. David Barbe, Dennis
 A. Barbour and S.J. Robert Slemp are DISMISSED without prejudice.

The Clerk is **DIRECTED** to send a copy of this Order to the <u>pro se</u> plaintiff and to counsel of record.

Entered: 02-26-2016

Is Michael 7. Urbanski

Michael F. Urbanski United States District Judge